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# NAVIGATING DIFFICULT CONVERSATIONS:

## Practical Tools From the Mediation Room

*by ROBYN E. FRICK*



**D**ifficult conversations are a reality in law practice. Whether it's delivering bad news to a client, justifying a large invoice, or engaging in a heated meet-and-confer, conflict and discomfort are often part of the job. As a mediator, I work in the heart of conflict. I focus on uncovering what drives each side, keeping the process productive and helping parties move toward meaningful resolution. Over time, I've found that a few core communication skills can go a long way in turning friction into progress. These techniques aren't exclusive to mediation; they're equally valuable in daily legal practice.



## [D]ifficult conversations can lead to stronger communication and lasting progress when approached with empathy, clarity, and emotional intelligence.

### Listen to Understand

Mediators are trained to listen not only to what is said, but also to what is left unsaid. We read between the lines, pick up on tone, and notice what's missing. The same is true when reading a brief: a gap in the timeline or an unexplained omission can be as telling as the facts included.

In one wage and hour dispute I mediated, a longtime employee sued his former employer over unpaid overtime, missed breaks, and wage statement violations. As the parties talked (and I listened), it became clear the true issue wasn't about hours or dollars—it was about a broken relationship. The employee felt discarded after a disagreement on his final day and was deeply hurt that the employer never reached out to him. From the employer's perspective, the lawsuit felt like a betrayal; the owner had

treated the employee like family and had even stood as best man at his wedding.

By listening closely and creating space for open, honest dialogue, it became clear the dispute wasn't really about timecards or policy violations. Rather, it stemmed from feelings of resentment, disloyalty, and disappointment. Once those emotions were acknowledged, the legal issues became easier to resolve.

The takeaway for lawyers? Give clients the space to speak openly. Let them tell their story without interruption so you can fully understand their perspective. Follow up with thoughtful, open-ended questions to uncover what's truly driving their position. As mediators often say, the goal is to identify the underlying interests. Addressing that deeper layer not only strengthens rapport, it also lays the foundation for more effective representation.

### The Power of Silence

Silence makes many people uncomfortable, especially in high-stakes legal work, where lawyers are trained to always have a response. But when used intentionally, silence can be a powerful tool.

In a heated real estate dispute I mediated, a listing agent was furious that a seller pulled his home off the market, despite the agent having secured a ready buyer. The agent insisted on being paid his commission, but the seller refused. I let the agent vent without interruption, listening closely to his frustration. When he finished, I intentionally paused. After ten long seconds of silence, which felt like an eternity in the moment, his face began to relax, and the tension in his posture eased. From there, he was able to consider the bigger picture: the risks, the time,



the cost, and the emotional toll of continued litigation. That moment of stillness became the turning point, opening the door to rational dialogue and, ultimately, resolution.

Attorneys routinely benefit from silence as well. In oral argument, pausing before responding to a judge's question allows you space to formulate a clear response that directly addresses the question asked. In emotionally charged conversations, a deliberate pause can help reset the tone. Whether a client is upset about a bill or opposing counsel is on the attack, resisting the urge to immediately respond defensively creates space for a calmer, more productive exchange. It may feel awkward, but silence is not weakness; it demonstrates control. Often, it prompts the other person to share more, revealing perspectives that can lead to greater clarity.

### Reading the Room—and the Client

Great mediators read the room. They assess tone, energy, and posture. They figure out who's holding the power, who's anxious, who's ready to talk. And they adjust accordingly. If a party is under time pressure, a mediator launching into long stories about law school days will only increase the party's frustration. Likewise, if an employee is crying about her termination, this isn't the time to tell a joke.

In one business mediation, I could immediately tell the plaintiff was guarded. The parties had tried mediation before, but the case did not resolve. I focused on building rapport and making the plaintiff feel comfortable. I acknowledged the stress she was under and explained how mediation could bring both resolution and emotional relief from the toll of litigation. Her face lit up. She shared that, in the previous mediation, the mediator tried to scare her into settling. He told her she would lose, that she wasn't strong enough to handle trial, and that she couldn't cope with what was coming. It backfired. She became even more determined to go to trial, just to prove she could. By reading the room, I was able to shift the energy. A different mindset took hold, which opened the door to a productive conversation.

As lawyers, we often focus on the facts, the law, and the legal strategy that supports our position. Reading the room when it comes to your clients, however, is just as important. Is your client analytical or emotional? Do they want frequent updates, or just the big picture? Take the time to ask questions like: "How do you like to communicate? What matters most to you in this process? Do you want to see drafts of all documents before they are filed?"

Matching your approach to your client's style builds trust, sets clear expectations, and minimizes friction down the road.

### Empathy Is a Strength

Empathy is not a weakness; it's a strategic advantage. It doesn't require agreeing with the other side, but rather, understanding their perspective. When you understand how someone sees the dispute, you're better equipped to anticipate their arguments, tailor your responses, and identify common ground.

In a landlord-tenant mediation, I sensed that a long-term tenant was upset, though he had barely spoken. When I invited him to share his thoughts, his emotions poured out. He felt betrayed by a landlord he trusted and was convinced that years of neglected repairs had caused health issues for his family. The landlord, in turn, explained that he hadn't acted out of malice or indifference, but he was conflict-averse and didn't know how to address the situation without making it worse. That small exchange shifted the dynamic. The tenant began to see the landlord's avoidance as fear rather than disregard. With that insight, the tension eased, and both sides were able to move toward resolution.

Empathy helps lawyers, too. Whether you're meeting and conferring over discovery or exploring informal settlement, taking the time to understand the opposing side's position enhances your ability to advocate effectively. When you acknowledge and evaluate the other party's needs while still protecting your client's interests, negotiations become more productive, the tone becomes more civil, and the path to resolution becomes clearer.

### Clarity Counts

Clarity is non-negotiable in mediation. If a mediator confuses the facts or mishandles the exchange of offers and demands, the entire process can derail. This is why I make accuracy and clear communication a top priority.

Lawyers face the same pressure. Clients want to know: What's next? What's the cost? What are the chances of success? Whether your client is a first-time litigant or a corporate legal department with layers of decision-makers, clarity builds trust and allows for informed decision-making. Take time to explain strategy, risks, and timelines in plain language. You're not just informing; you're building a partnership.


### Show Your Care

One of the most powerful things a mediator can do is show up prepared and fully engaged.

When counsel sees that I've read the briefs, know the facts, and care about the people in the room, it matters.

Small gestures can make a big impact. In a personal injury mediation, the plaintiff struggled with ongoing neck pain. Having dealt with similar pain myself, I shared a few personal suggestions, including a supportive pillow and a drug-free pain patch that had helped me significantly. That moment of genuine connection shifted the tone. Once she saw that I truly cared, she opened up more freely, which made for a much more productive and meaningful discussion.

Experienced attorneys know that strong client relationships are built on more than legal skill. Understanding a client's business, priorities, and pressures, whether professional or personal, can make all the difference. The most trusted advisors treat each client as their only client. Thoughtful touches like sending an article relevant to their industry, remembering a birthday, or following up after a big milestone can foster trust and strengthen your working relationship. In a crowded market, competence is expected. What sets you apart is the degree to which your clients feel you care.

In sum, difficult conversations can lead to stronger communication and lasting progress when approached with empathy, clarity, and emotional intelligence. The next time you're facing a challenging exchange, try reaching into the mediator's toolbox. These techniques build stronger relationships, drive better outcomes, and elevate your legal practice. 

**Robyn E. Frick** is a full-time mediator with over nineteen years of experience as a litigator representing both plaintiffs and defendants. She mediates business, employment, real estate, and personal injury disputes, bringing legal insight, emotional intelligence, and ego-free efficiency to every case. Robyn has also served on court panels conducting mediations and settlement conferences. She can be reached at [Robyn@RobynFrickMediation.com](mailto:Robyn@RobynFrickMediation.com).

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